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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 DR. ELLIOT MCGUCKEN, an
individual,

13
14 Plaintiff,

15 v.

16 MATADOR VENTURES, INC., a
17 California corporation; and DOES 1-10,

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19 Defendants.
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Case No.:

PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, Dr. Elliot McGucken (“McGucken”), by and through his undersigned
2 attorneys, hereby prays to this honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
5 *et seq.*

6 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
7 1338 (a)-(b).

8 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
9 1400(a) in that this is the judicial district in which a substantial part of the acts and
10 omissions giving rise to the claims occurred.

11 **PARTIES**

12 4. Plaintiff McGucken is an individual residing in Los Angeles, California.

13 5. McGucken is informed and believes and thereon alleges that Defendant
14 Matador Ventures, Inc. (“Matador”) is a California corporation doing business in and
15 with the Los Angeles County, including through its principal place of business in San
16 Francisco, California 94120.

17 6. On information and belief, McGucken alleges that Defendants DOES 1
18 through 10 (collectively, “DOE Defendants”) (altogether with Matador,
19 “Defendants”) are other parties not yet identified who have infringed McGucken’s
20 copyrights, have contributed to the infringement of McGucken’s copyrights, or have
21 engaged in one or more of the wrongful practices alleged herein. The true names,
22 whether corporate, individual or otherwise, of DOE Defendants are presently
23 unknown to McGucken, who therefore sues said DOE Defendants by such fictitious
24 names, and will seek leave to amend this Complaint to show their true names and
25 capacities when same have been ascertained.

26 7. On information and belief, McGucken alleges that at all times relevant
27 hereto each of the Defendants was the agent, affiliate, officer, director, manager,
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principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of McGucken's rights and the damages to McGucken proximately caused thereby.

CLAIMS RELATED TO MCGUCKEN'S PHOTOGRAPH

8. McGucken is an acclaimed photographer who created and owns the original photograph depicted in **Exhibit A** attached hereto ("Subject Photograph.")

9. McGucken has registered the Subject Photograph and was granted U.S. copyright registrations as set forth in **Exhibit A** attached hereto.

10. Prior to the acts complained of herein, McGucken published and widely publicly displayed and disseminated the Subject Photograph including without limitation on McGucken's website *www.mcgucken.com*.

11. Following McGucken's dissemination and display of the Subject Photograph, Defendants, and each of them, copied, reproduced, displayed, distributed, created derivative works, and/or otherwise used the Subject Photograph without license, authorization, or consent, including by using the Subject Photograph in an article on their website ("Infringing Use") which was created, published, and distributed by Matador. The Infringing Use was made widely and publicly available at *matadornetwork.com*, which is owned and operated by Matador. True and correct screen captures of the Infringing Use, and its accompanying URL, are included in **Exhibit B** attached hereto.

12. On information and belief, it is alleged that Matador made an unauthorized copy of the Subject Photograph and then cropped and edited that work before adding its own name to the work and publishing same under its own name.

1 13. McGucken has not in any way authorized Defendants, or any of them, to
2 copy, reproduce, display, distribute, create derivative works of, or otherwise use the
3 Subject Photograph.

4 14. On February 4, 2022, McGucken, through his undersigned attorneys,
5 served Defendants a letter demanding that Defendants cease and desist all infringing
6 uses of McGucken's copyrighted work and reasonably resolve the action. Defendants
7 did not respond to the Demand letter and continue to display the Subject Photograph.
8 Given this position McGucken was forced to file this action.

9 **FIRST CLAIM FOR RELIEF**

10 **(For Copyright Infringement – Against all Defendants, and Each)**

11 15. McGucken repeats, re-alleges, and incorporates herein by reference as
12 though fully set forth, the allegations contained in the preceding paragraphs of this
13 Complaint.

14 16. On information and belief, McGucken alleges that Defendants, and each
15 of them, had access to the Subject Photograph, including, without limitation, through
16 (a) viewing the Subject Photograph on McGucken's website, (b) viewing Subject
17 Photograph online, and (c) viewing Subject Photograph through a third party. Access
18 is further evidenced by the Subject Photograph's exact reproduction in the Infringing
19 Use.

20 17. On information and belief, McGucken alleges that Defendants, and each
21 of them, copied, reproduced, displayed, and distributed the Subject Photograph,
22 including without limitation as seen in **Exhibit B** attached hereto.

23 18. On information and belief, McGucken alleges that Defendants, and each
24 of them, infringed McGucken's copyrights by creating infringing derivative works
25 from the Subject Photograph and publishing same to the public.

26 19. Due to Defendants', and each of their, acts of infringement, McGucken
27 has suffered general and special damages in an amount to be established at trial.
28

1 20. Due to Defendants', and each of their, acts of copyright infringement as
2 alleged herein, Defendants, and each of them, have obtained direct and indirect
3 profits they would not otherwise have realized but for their infringement of
4 McGucken's rights in the Subject Photograph. As such, McGucken is entitled to
5 disgorgement of Defendants' profits directly and indirectly attributable to
6 Defendants' infringement of McGucken's rights in the Subject Photograph in an
7 amount to be established at trial.

8 21. On information and belief, McGucken alleges that Defendants, and each
9 of them, have committed acts of copyright infringement, as alleged above, which
10 were willful, intentional and malicious, which further subjects Defendants, and each
11 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
12 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from
13 asserting certain equitable and other defenses.

14 **SECOND CLAIM FOR RELIEF**

15 **(For Vicarious and/or Contributory Copyright Infringement – Against all**
16 **Defendants, and Each)**

17 22. McGucken repeats, re-alleges, and incorporates herein by reference as
18 though fully set forth, the allegations contained in the preceding paragraphs of this
19 Complaint.

20 23. On information and belief, McGucken alleges that Defendants knowingly
21 induced, participated in, aided and abetted in and profited from the illegal
22 reproduction and distribution of the Subject Photograph as alleged hereinabove. Such
23 conduct included, without limitation, publishing photographs obtained from third
24 parties that Defendants knew, or should have known, were not authorized to be
25 published by Defendants.

26 24. On information and belief, McGucken alleges that Defendants, and each
27 of them, are vicariously liable for the infringement alleged herein because they had
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1 the right and ability to supervise the infringing conduct and because they had a direct
 2 financial interest in the infringing conduct. Specifically, Defendants, and each of
 3 them, profited in connection with the Infringing Use, and were able to supervise the
 4 distribution, broadcast, and publication of the Infringing Use.

5 25. By reason of the Defendants', and each of their, acts of contributory and
 6 vicarious infringement as alleged above, McGucken has suffered general and special
 7 damages in an amount to be established at trial.

8 26. Due to Defendants' acts of copyright infringement as alleged herein,
 9 Defendants, and each of them, have obtained direct and indirect profits they would
 10 not otherwise have realized but for their infringement of McGucken's rights in the
 11 Subject Photograph. As such, McGucken is entitled to disgorgement of Defendants'
 12 profits directly and indirectly attributable to Defendants' infringement of
 13 McGucken's rights in the Subject Photograph, in an amount to be established at trial.

14 27. On information and belief, McGucken alleges that Defendants, and each
 15 of them, have committed acts of copyright infringement, as alleged above, which
 16 were willful, intentional and malicious, which further subjects Defendants, and each
 17 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
 18 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from
 19 asserting certain equitable and other defenses.

20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiff prays for judgment as follows:

22 **Against all Defendants, and Each with Respect to Each Claim for Relief:**

- 23 a. That Defendants, and each of them, as well as their employees, agents,
 24 or anyone acting in concert with them, be enjoined from infringing
 25 McGucken's copyrights in the Subject Photograph, including without
 26 limitation an order requiring Defendants, and each of them, to remove
 27 any content incorporating, in whole or in part, the Subject Photograph
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1 from any print, web, or other publication owned, operated, or controlled
2 by any Defendant.

- 3 b. That McGucken be awarded all profits of Defendants, and each of them,
4 plus all losses of McGucken, plus any other monetary advantage gained
5 by the Defendants, and each of them, through their infringement, the
6 exact sum to be proven at the time of trial, and, to the extent available,
7 statutory damages as available under the 17 U.S.C. § 504 and other
8 applicable law.
- 9 c. That a constructive trust be entered over any revenues or other proceeds
10 realized by Defendants, and each of them, through their infringement of
11 McGucken's intellectual property rights;
- 12 d. That McGucken be awarded his attorneys' fees as available under the
13 Copyright Act U.S.C. § 505 et seq.;
- 14 e. That McGucken be awarded his costs and fees under the above statutes;
- 15 f. That McGucken be awarded statutory and enhanced damages under the
16 statutes set forth above;
- 17 g. That McGucken be awarded pre-judgment interest as allowed by law;
- 18 h. That McGucken be awarded the costs of this action; and
- 19 i. That McGucken be awarded such further legal and equitable relief as the
20 Court deems proper.

21 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
22 38 and the 7th Amendment to the United States Constitution.

23 Dated: February 3, 2023

Respectfully submitted,

24 By: /s/ Scott Alan Burroughs
25 Scott Alan Burroughs, Esq.
26 Trevor W. Barrett, Esq.
27 Frank R. Trechsel, Esq.
28 DONIGER / BURROUGHS
Attorneys for Plaintiff